

## Remarks

The above Amendments and these Remarks are in reply to the Office Action mailed May 25, 2006.

Claims 1-74 were pending in the Application prior to the outstanding Office Action. Claims 33, 37, 45 and 70-74 were withdrawn in a previous Reply. In the Office Action, the Examiner rejected claims 19, 20, 22-25, 27, 34-36, 38, 40, 44, 46-50 and 52, objected to claims 26, 28-32, 39, 41-43 and 51, and allowed claims 1-18, 21 and 53-69. The present Reply cancels claims 19, 20, 23, 25, 33, 37, 45 and 70-74 and amends claims 16, 22, 24, 26-28, 38 and 52, leaving for the Examiner's present consideration claims 1-18, 22, 24, 26-32, 34-36, 38-44, and 46-69. Applicants respectfully request reconsideration of the rejections.

### I. RESTRICTION REQUIREMENT

Applicants acknowledge withdrawal of claims 33, 37, 45 and 70-74 pursuant to 37 CFR 1.142(b), and request cancellation of claims 33, 37, 45 and 70-74 for prosecution in a divisional case.

### II. CLAIM OBJECTIONS

#### *Claims 16 and 52*

The Examiner objected to 16 and 52 because of the following informalities: "in claim 16, a comma or alike should be inserted between the words 'housing' and 'the'; and in claim 52, line 2, the word 'chaped' should be substituted by the word ---shaped---." Applicants have amended claims 16 and 52 to correct the clerical errors. Applicants respectfully request withdrawal of the objection.

### III. REJECTION UNDER 35 U.S.C. §102(B) OVER *HOCHSHULER ET AL* (U.S. PAT. NO. 6,080,193)

#### *Claims 19, 20, 22-25, 27, 34-36, 38, 40, 44, 46-50 and 52*

The Examiner rejected claims 19, 20, 22-25, 27, 34-36, 38, 40, 44, 46-50 and 52 under 35 U.S.C. §102(b) over *Hochshuler*. Applicants request cancellation of claims 19, 20, 23, and 25. Applicants respectfully traverse the rejection of claims 22, 24, 27, 34-36, 38, 40, 44, 46-50 and 52.

In the Office Action, the Examiner writes that "Hochshuler et al discloses a spinal implant (10) comprising an upper plate (84), a lower plate (85) positioned opposite the upper plate such that a gap having a maximum width between the upper and lower plates (see Figs. 13 and 15). A device (tool, not shown) that urge the upper and lower plates apart, and wherein the upper plate and the lower plate are urged together and the gap between the plates narrows (see Figs. 12 and 14)." See OA, page 2. However, nowhere does *Hochshuler* disclose an artificial spinal disk comprising a "a resisting mechanism disposed between the first spacer and the second spacer such that the first spacer and the second spacer are urged apart" as recited in claim 22, or an artificial spinal disk comprising "a resisting mechanism adapted to urge the first and second spacer apart" as recited in claim 38.

Referring to FIGs. 14 and 15, *Hochshuler* discloses cam pins 86, 87 distanced apart from one another by actuating a connector 80. The connector 80 fixes the relative distance between the cam pins 86, 87. The

cam pins 86, 87 are not "urged apart" by a resisting mechanism, but rather are fixed in position relative to one another until the connector 80 is actuated. This can be disadvantageous where it is desired that the artificial spinal disk change shape in response to a force that exceeds the resisting mechanism.

*Hochshuler* fails to disclose an artificial disk comprising "a resisting mechanism"; therefore, *Hochshuler* cannot anticipate claims 22 and 38 under 35 U.S.C. §102(b). Dependent claims have at least the features of the independent claims from which they depend. Because *Hochshuler* fails to disclose an artificial disk comprising "a resisting mechanism", *Hochshuler* cannot anticipate claims 24, 27, 34-36, 49, 50 and 52 (which ultimately depend from claim 22) and claims 40, 44 and 46-48 (which ultimately depend from claim 38) under 35 U.S.C. §102(b). Accordingly, Applicant respectfully requests withdrawal of the rejection.

#### IV. ALLOWABLE SUBJECT MATTER

Applicants appreciate the indication that claims 1-18, 21 and 53-69 are allowed.

Applicants also appreciate the indication that claims 26, 28-32, 39, 41-43 and 51 are objected to as being dependent upon a rejected base claim, but would be allowable if amended to include the limitations of the base claim and any intervening claims. However, given the argument above in Section III, Applicants argue that claims 26, 28-32, 39, 41-43 and 51 depend from allowable claims. Applicants respectfully request withdrawal of the objection.

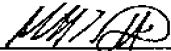
#### V. CONCLUSION

In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and a Notice of Allowance is requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this Reply, including any fee for extension of time, which may be required.

Respectfully submitted,

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